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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

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**State of Alabama ex rel. Attorney General Steve Marshall**

**v.**

**TY Green's Massage Therapy, Inc., Yuping Tang, and  
Jiao Liu a/k/a Serena Tang**

**Appeal from Madison Circuit Court  
(CV-19-35)**

PER CURIAM.

The State appeals from an order of the Madison Circuit Court denying its request for a preliminary injunction against TY Green's

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Massage Therapy, Inc., Yuping Tang, and Jiao Liu a/k/a Serena Tang (collectively referred to as "the defendants"). We affirm the trial court's order.

### Facts

Yuping Tang and her daughter, Jiao Liu a/k/a Serena Tang, owned and operated a business that was incorporated as TY Green's Massage, Inc. The business had four locations: one on University Drive in Huntsville, one on South Parkway in Huntsville, one in Madison, and one in Decatur. In September 2018, the Madison Police Department received an anonymous tip that a customer had gone into the defendants' Madison location for a massage and that he had been touched inappropriately. As a result, the department started an investigation of TY Green's Massage Therapy that included, among other things, sending multiple men into the business locations undercover to get massages and conducting surveillance of the business locations and of the houses where the employees of the business were housed.

During the investigation, some of the massage therapists touched clients in places they were not supposed to touch according to Board of

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Massage Therapy guidelines; that some massage therapists straddled clients and/or touched the clients with the intimate parts of their bodies and/or touched the intimate parts of the clients' bodies; and that at least one massage therapist engaged in sexual acts, including intercourse, with a client. The investigation also revealed that the massage therapists lived in houses owned by the Tangs; that the Tangs provided transportation for the therapists each day to get to the business locations where they worked; and that the therapists normally worked 12 hours per day, 7 days per week.

### Procedural History

On April 17, 2019, the State, by and through Attorney General Steve Marshall, filed a complaint in the Madison Circuit Court against TY Green's Massage Therapy, Inc., doing business as Massage Foot Care and/or Massage and Foot Care Spa, Health Massage, SO Massage, and/or Massage Spa; Yuping Tang; and Jiao Liu a/k/a Serena Tang. The complaint set forth 41 counts, including 13 counts alleging first-degree human trafficking, violations of § 13A-6-152, Ala. Code 1975; 26 counts alleging second-degree human trafficking, violations of § 13A-6-153, Ala.

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Code 1975; and 2 counts alleging deceptive trade practices, violations of § 8-19-5(27), Ala. Code 1975. Among other things, the State requested injunctive and declaratory relief, damages, and civil penalties.

In the complaint, the State alleged that the defendants were operating "illicit massage businesses that serve as fronts for a human trafficking operation." Specifically, it contended:

"In the Defendants' organization, the 'employees' work incredibly long hours during which at least some of them are expected to engage in sex acts with the businesses' customers. When the victims are not 'Working,' they seem to have little freedom of movement; they are transported in groups to and from the Defendants' businesses and are kept in houses owned by the Defendants where they are left to eat and sleep in terrible conditions. The Defendants, on the other hand, have reaped millions of dollars in revenue from their businesses, and the Attorney General now brings this action in order to put an end to their conduct and protect their victims from further harm."

The State also alleged that the defendants' actions violate Alabama's Deceptive Trade Practices Act. See § 8-19-1 et seq., Ala. Code 1975. In particular, it asserted:

"The Deceptive Trade Practices Act authorizes the Office of the Attorney General to seek a temporary restraining order, as well as preliminary and permanent injunctive relief, when it has reason to believe that a person or business is engaging in

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any act or practice declared to be unlawful under the Deceptive Trade Practices Act. Ala. Code § 8-19-8(a). Section 8-19-5(27) of the Deceptive Trade Practices Act specifically prohibits engaging in any 'unconscionable ... act or practice in the conduct of trade or commerce.' It is, without a doubt, unconscionable to coerce immigrant women into serving as virtual slaves in furtherance of one's business. For that reason, too, the State brings this action to stop the Defendants' ongoing unlawful practices and to prevent such unlawful conduct in the future."

The State attached extensive documentation in support of the complaint. In addition to the complaint, the State also filed an "Ex Parte Motion for Temporary Restraining Order, Asset Freeze, Appointment of a Receiver, & Order to Show Cause Why a Preliminary Injunction Should Not Issue."

On April 17, 2019, the same day the complaint and ex parte motion were filed, the trial court entered an "Ex parte Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue." The order was executed, and the receiver and law-enforcement officers went to each of the business locations and residences

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and seized, among other things, cellular telephones, electronic devices, money, and vehicles.

After several continuances, the trial court conducted a hearing on whether to issue a preliminary injunction on August 12 and 14, 2019.

Thereafter, on August 16, 2019, it entered the following order:

"This case came on for hearing for consideration of the petition filed by the State of Alabama Attorney General (hereinafter 'State of Alabama') for a preliminary injunction against Defendants, TY Green's Massage Therapy, Inc., Yuping Tang, and Liu Jiao a/k/a Serena Tang. All parties were represented by counsel. Upon consideration of the evidence received ore tenus, the Court finds as follows:

"On April 17, 2019, the State of Alabama filed its Verified Complaint for Injunctive, Declaratory or Other Relief. This Court entered the Ex Parte Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, Other Equitable Relief, and Order to Show Cause Why Preliminary Injunction Should Not Issue on the same date. This Court set a preliminary injunction hearing for April 29, 2019. On April 24, 2019, counsel for the Defendant, Liu Jiao a/k/a Serena Tang, made an oral motion to continue the preliminary injunction hearing. This Court granted said request and reset the preliminary injunction hearing to June 17, 2019. On June 10, 2019, the Defendant, Liu Jiao a/k/a Serena Tang, filed a second motion to continue hearing on the preliminary injunction. This Court granted said request and reset the hearing to August 12, 2019.

"This Court must view the State of Alabama's petition for injunctive relief in light of the following requirements recognized by the Alabama Supreme Court:

" 'A preliminary injunction should be issued only when the party seeking an injunction demonstrates: (1) that without the injunction the [party] would suffer irreparable injury; (2) that the [party] has no adequate remedy at law; (3) that the [party] has at least a reasonable chance of success on the merits of his case; and (4) that the hardship imposed on the [party opposing the preliminary injunction] by the injunction would not unreasonably outweigh the benefit accruing to the [party seeking the injunction].'

" Marathon Construction and Demolition, LLC, and TAX, LLC v. King Metal Recycling and Processing Corporation, 129 So. 3d 272, 275-276 (Ala. 2013), quoting Ormco Corp. v. Johns, 869 So. 2d 1113 (Ala. 2003).

"The Court finds that the State of Alabama has failed to carry its burden of proof on at least two of the foregoing elements. First, regarding the requirement for irreparable injury, the Alabama Supreme Court has recognized that 'courts will not use the extraordinary power of injunctive relief merely to allay an apprehension of a possible injury; the injury must be imminent and irreparable in a court of law.' Ormco Corp. v. Johns, 869 So. 2d at 1113-1114, quoting Martin v. City of Linden, 667 So. 2d 732, 736 (Ala. 1995). The evidence introduced by the State of Alabama failed to establish such irreparable injury.

"Second, the State of Alabama failed to establish that there is no adequate remedy at law. To the contrary, the

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Court is satisfied that there are adequate remedies at law, to include other civil, criminal and/or administrative remedies; i.e., the Alabama Board of Massage Therapy to revoke licenses."

(Emphasis added.)

On August 16, 2019, the State filed a notice of appeal to this Court.<sup>1</sup>

On that same date, it also filed a motion for a stay of the action pending appeal; the trial court denied that motion on August 19, 2019. On August 21, 2019, this Court granted the State's "Emergency Motion for Stay Pending Appeal."

#### Standard of Review

"The decision to grant or to deny a preliminary injunction is within the trial court's sound discretion. In reviewing an order granting a preliminary injunction, the Court determines whether the trial court exceeded that discretion." SouthTrust Bank of Alabama, N.A. v. Webb–Stiles Co., 931 So. 2d 706, 709 (Ala. 2005). As to questions of fact, the ore tenus rule is applicable in preliminary-injunction proceedings. See Water Works & Sewer Bd. of Birmingham v. Inland Lake Invs., LLC, 31 So. 3d 686, 689–90 (Ala. 2009). As

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<sup>1</sup>An appeal may be taken from "any interlocutory order granting, continuing, modifying, refusing, or dissolving an injunction, or refusing to dissolve or to modify an injunction." Rule 4(a)(1)(A), Ala. R. App. P.

this Court recently noted in Holiday Isle, LLC v. Adkins, 12 So. 3d 1173, 1176 (Ala. 2008), however,

" "[t]o the extent that the trial court's issuance of a preliminary injunction is grounded only in questions of law based on undisputed facts, our longstanding rule that we review an injunction solely to determine whether the trial court exceeded its discretion should not apply. We find the rule applied by the United States Supreme Court in similar situations to be persuasive: 'We review the District Court's legal rulings de novo and its ultimate decision to issue the preliminary injunction for abuse of discretion.' Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418, 428, 126 S. Ct. 1211, 163 L. Ed. 2d 1017 (2006) ...."

" '(Emphasis omitted.)' "

Facebook, Inc. v. K.G.S., 294 So. 3d 122, 143 (Ala. 2019)(quoting Barber v. Cornerstone Cmty. Outreach, Inc., 42 So. 3d 65, 77-78 (Ala. 2009)).

"This Court has set forth the requirements for a preliminary injunction on numerous occasions.

" 'A preliminary injunction may issue only when the party seeking the injunction demonstrates

" "(1) that without the injunction the [party] would suffer irreparable injury; (2) that the [party] has no adequate remedy at law; (3) that the [party] has at least a reasonable chance of success on the ultimate merits; and (4) that the hardship imposed on the [party opposing the preliminary injunction] by the injunction would not unreasonably outweigh the benefit accruing to the [party seeking the injunction]."

" Ormco Corp. v. Johns, 869 So. 2d 1109, 1113 (Ala. 2003) (quoting Perley v. Tapscan, Inc., 646 So. 2d 585, 587 (Ala. 1994))."

" SouthTrust Bank[ of Alabama, N.A. v. Webb-Stiles Co.], 931 So. 2d [706,] 709 [(Ala. 2005)].

"....

"Our cases hold that a preliminary injunction should be issued only when the party seeking the injunction can demonstrate that, without the injunction, he or she would suffer irreparable injury for which there is no adequate remedy at law.

" "' "Irreparable injury" is an injury that is not redressable in a court of law through an award of money damages.' [Perley v. Tapscan, Inc.], 646 So. 2d [585,] 587 [(Ala. 1994)] (citing Triple J Cattle, Inc. v. Chambers, 551 So. 2d 280 (Ala. 1989)). However, 'courts will not use the extraordinary power of injunctive relief merely to allay an apprehension of a possible injury; the

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injury must be imminent and irreparable in a court of law.' Martin v. City of Linden, 667 So. 2d 732, 736 (Ala. 1995); see also Borey v. National Union Fire Ins. Co. of Pittsburgh, 934 F.2d 30, 34 (2d Cir. 1991) (stating that 'a mere possibility of irreparable harm is insufficient to justify the drastic remedy of a preliminary injunction')."

"Monte Sano Research Corp. v. Kratos Defense & Sec. Solutions, Inc., 99 So. 3d 855, 862 (Ala. 2012) (quoting Ormco Corp. v. Johns, 869 So. 2d 1109, 1113 (Ala. 2003))."

Ex parte B2K Sys., LLC, 162 So. 3d 896, 903-04 (Ala. 2014).

The party seeking a preliminary injunction bears the burden of producing evidence sufficient to support its issuance. See Ormco Corp. v. Johns, 869 So. 2d 1109, 1113 (Ala. 2003). "If the party seeking the injunction fails to establish each of these prerequisites, then a preliminary injunction should not be entered. If the trial court enters a preliminary injunction when these prerequisites have not been met, the trial court's order must be dissolved and the case remanded." Blount Recycling, LLC v. City of Cullman, 884 So. 2d 850, 853 (Ala. 2003).

### Discussion

The State argues that it was entitled to a preliminary injunction because, it says, it proved all four elements necessary for the issuance of a preliminary injunction. We disagree.

In its complaint in this case, the State alleged:

"1. Human trafficking is commonly referred to as a modern-day form of slavery. Although human trafficking cases traditionally fall within two general categories -- sex trafficking or labor trafficking -- approximately twenty-five business models have been identified, including the illicit massage business model ('IMB'), see The Typology of Modern Slavery, Polaris Project, <https://polarisproject.org/typology> (last accessed April 4, 2019). Under this business model, the business is presented as a single storefront that offers legitimate massage services from women from China that are in their mid-thirties to late fifties. Traffickers use victims' cultural background, coupled with psychological and/or financial manipulation, to coerce and/or deceive the victims.

"2. Traffickers exploit long-standing cultural values and/or beliefs to coerce victims. These include the ideas of: (a) preserving honor of self and family; (b) maintaining the status quo or solidarity; (c) honoring an obligation of reciprocation and/or repaying a 'favor'; (d) relying on existing relationships or an established group<sup>1</sup> for support; and (e) being self-sufficient and choosing to endure conditions, maintaining an inner focus on control and acceptance of failure. Victims are typically indirect in their communications, emphasizing non-verbal methods, and value tradition over change; thus, disclosure of providing sex for money or accepting they are a 'victim' of human trafficking can be difficult due to these cultural beliefs.

"3. These cultural beliefs also provide a mechanism for traffickers to isolate and control victims. When recruited, this business model initially appears reasonable based on the victims' business experience in China and the belief that massage therapy can be 'learned, on the job' without any previous work experience. See Recognize the Signs, Polaris Project, <https://polarisproject.org/human-trafficking/recognize-signs> (last accessed April 10, 2019). Victims may also consider the situation safer because they are rarely alone. It is common for victims to live together, either in an apartment or a house, and be transported from their residence to work by individuals connected to the trafficker. This may prevent the victims from independently meeting basic needs, such as purchasing food or feminine products.

"4. Victims may be monitored on closed circuit television cameras, both at the IMB and where they live.

"5. Oftentimes victims are moved frequently between IMB locations, as well as moved to different cities and states. This may prevent the victims from having knowledge of their location. It is also common for traffickers to hold victims' identification documents. Further, in some instances, victims may fear being arrested or deported.

"6. It is also not uncommon for human trafficking victims to work excessively long hours or to go unpaid, be paid very little, or be paid only through tips. See Recognize the Signs, Polaris Project, <https://polarisproject.org/human-trafficking/recognize-signs> (last accessed April 10, 2019). They may also have a scripted or inconsistent story. Id.

"7. Additionally, there are numerous misconceptions about human trafficking that help organizations like the Defendants' thrive. Two common misconceptions are that

human trafficking does not occur in the United States, see, e.g., The Department of Homeland Security's Blue Campaign, <https://www.dhs.gov/blue-campaign/myths-and-misconceptions> (last accessed April, 3, 2019), and that an individual who initially consents to his or her situation is not being trafficked. See Human Trafficking Myths and Facts, Polaris Project, <https://polarisproject.org/human-trafficking-myths-and-facts>(last accessed April 9, 2019). Yet human trafficking is not only occurring in the United States, but also in Madison County, Alabama. Individuals from other countries may immigrate to the United States on the belief that they will find legal, gainful, employment in the United States, but actually find themselves under the control of traffickers and being coerced to perform commercial sex acts and/or labor. This is what is happening at the Defendants' massage businesses in Huntsville, Madison, and Decatur, where their 'employees' are subjected to both labor and sexual servitude so the Defendants' enterprise can profit.

"8. This case involves both first- and second-degree human trafficking as those offenses are defined in Sections 13A-6-152 and -153 of the Code of Alabama. Under Section 13A-6-157.1(a) of the Code of Alabama, the Attorney General is authorized to bring an action seeking 'to restrain by temporary restraining order, or temporary or permanent injunction,' acts of human trafficking if he 'has reason to believe that any person, corporation, or any other legal entity is engaging in, has engaged in, or is about to engage in' acts of human trafficking. In addition, Section 13A-6-157.1(b) authorizes the Attorney General to bring an action 'to recover actual damages for victims of acts or practices performed in violation of' Alabama's Human Trafficking laws.

"9. The evidence collected during this investigation has revealed that the Defendants are running illicit massage

businesses that serve as fronts for a human trafficking operation. In the Defendants' organization, the 'employees' work incredibly long hours during which at least some of them are expected to engage in sex acts with the businesses' customers. When the victims are not 'working,' they seem to have little freedom of movement; they are transported in groups to and from the Defendants' businesses and are kept in houses owned by the Defendants where they are left to eat and sleep in terrible conditions. The Defendants, on the other hand, have reaped millions of dollars in revenue from their businesses, and the Attorney General now brings this action in order to put an end to their conduct and protect their victims from further harm.

"10. This case also involves Alabama's Deceptive Trade Practices Act. Ala. Code § 8-19-1, et seq. The Deceptive Trade Practices Act authorizes the Office of the Attorney General to seek a temporary restraining order, as well as preliminary and permanent injunctive relief, when it has reason to believe that a person or business is engaging in any act or practice declared to be unlawful under the Deceptive Trade Practices Act. Ala. Code § 8-19-8(a). Section 8-19-5(27) of the Deceptive Trade Practices Act specifically prohibits engaging in any 'unconscionable ... act or practice in the conduct of trade or commerce.' It is, without a doubt, unconscionable to coerce immigrant women into serving as virtual slaves in furtherance of one's business. For that reason, too, the State brings this action to stop the Defendants' ongoing unlawful practices and to prevent such unlawful conduct in the future.

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"<sup>11</sup>In a socially-oriented and collective culture like China's, social affiliations are often "satisfied within already

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established groups," which encourages seeking support from existing relationships.' "

(Citations to exhibits omitted.)

During the hearing, the State argued that it had established that the defendants were engaging in human trafficking. Then, with regard to the irreparable-injury element, it asserted:

"[T]he State does suffer immediate and irreparable harm. The duty of the State -- part of the duty of the State is to protect its citizens from being subjected to this type of behavior. If these businesses are allowed to reopen while this case continues, then this behavior can continue."

Finally, in its brief to this Court, the State argues:

"The [first] factor to be considered is whether the State would suffer immediate and irreparable injury without the issuance of an injunction. See Ormco Corp. [v. Johns], 869 So. 2d [1109,] 1113 [(Ala. 2003)]. The trial court ruled that the State had failed to satisfy this factor. (C. 769.) But there can be no doubt that it did. Human trafficking is evil, and giving the [defendants] the opportunity to continue perpetrating that evil during the pendency of this litigation would clearly cause the State immediate and irreparable injury. Thus, the trial court's ruling was erroneous."

Based on its allegations in its complaint and its arguments during the hearing and before this Court, the State could have established an irreparable injury only if it presented evidence to establish that the

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defendants were engaging in human trafficking. Because the trial court found that the State had not established an irreparable injury, it appears that, even though it did not make an explicit finding, that court at least implicitly made a finding of fact that the State had not presented evidence indicating that it had at least a reasonable chance of succeeding in proving that the defendants were engaging in human trafficking. The evidence before the trial court and before this Court supports such a conclusion.

With regard to first-degree human trafficking, § 13A-6-152, Ala. Code 1975, provides, in relevant part:

"(a) A person commits the crime of human trafficking in the first degree if:

"(1) He or she knowingly subjects another person to labor servitude or sexual servitude.

"....

"....

"(c) A corporation, or any other legal entity other than an individual, may be prosecuted for human trafficking in the first degree for an act or omission only if an agent of the corporation or entity performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation or entity, and the commission of the crime was either authorized, requested,

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commanded, performed, or within the scope of the person's employment on behalf of the corporation or entity or constituted a pattern of conduct that an agent of the corporation or entity knew or should have known was occurring."

With regard to second-degree human trafficking, § 13A-6-153, Ala. Code 1975, provides, in relevant part:

"(a) A person commits the crime of human trafficking in the second degree if:

"(1) A person knowingly benefits, financially or by receiving anything of value, from participation in a venture or engagement for the purpose of sexual servitude or labor servitude.

"(2) A person knowingly recruits, entices, solicits, induces, harbors, transports, holds, restrains, provides, maintains, subjects, or obtains by any means another person for the purpose of labor servitude or sexual servitude.

"(3) A corporation, or any other legal entity other than an individual, may be prosecuted for human trafficking in the second degree for an act or omission only if an agent of the corporation or entity performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation or entity, and the commission of the crime was either authorized, requested, commanded, performed, or within the scope of the person's employment on behalf of the corporation

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or entity or constituted a pattern of conduct that an agent of the corporation or entity knew or should have known was occurring."

With regard to Alabama's statutes criminalizing human trafficking, § 13A-6-151, Ala. Code 1975, provides as follows:

"As used in this article [i.e., Title 13A, Chapter 6, Article 8, 'Human Trafficking'], the following terms shall have the following, or any combinations of the following, meanings ascribed to them by this section:

"(1) Coercion. Any of the following:

"a. Causing or threatening to cause physical injury or mental suffering to any person, physically restraining or confining any person, or threatening to physically restrain or confine any person or otherwise causing the person performing or providing labor or services to believe that the person or another person will suffer physical injury or mental suffering.

"b. Implementing any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in physical injury, mental suffering, or physical restraint of any person.

"c. Destroying, concealing, removing, confiscating, or withholding

from the person or another person, or threatening to destroy, conceal, remove, confiscate, or withhold from the person or another person, the person's or any person's actual or purported government records, immigration documents, identifying information, or personal or real property.

"d. Exposing or threatening to expose any fact or information that if revealed would tend to subject a person to criminal prosecution, criminal or immigration proceedings, hatred, contempt, or ridicule.

"e. Threatening to report the person or another person to immigration officials or to other law enforcement officials or otherwise blackmailing or extorting the person or another person.

"f. Controlling a person's access to a controlled substance, as the term is defined in Section 20-2-2, [Ala. Code 1975].

"g. Rape or sodomy or threatened rape or sodomy of any person, as defined in this title [i.e., Title 32, the Criminal Code].

"(2) Deception. Any of the following:

"a. Creating or confirming an impression of any existing fact or past event which is false and which the accused knows or believes to be false.

"b. Exerting financial control over the person or another person by placing the person or another person under the actor's control as a security or payment of a debt, if the value of the services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined or the principal amount of the debt does not reasonably reflect the value of the items or services for which debt was incurred or by preventing a person from acquiring information pertinent to the disposition of the debt, referenced in this paragraph.

"c. Promising benefits or the performance of services which the accused does not intend to be delivered. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this article.

"d. Using any scheme, plan, or pattern, whether overt or subtle, intended to cause any person to believe that, if the person did not perform such labor, services, acts, or performances,

the person or another person would suffer physical injury or mental suffering.

"(3) Labor Servitude. Work or service of economic or financial value which is performed or provided by another person and is induced or obtained by coercion or deception.

"(4) Mental Suffering. A high degree of mental pain or emotional disturbances, such as distress, anxiety, public humiliation, or psychosomatic physical symptoms. It is more than mere disappointment, anger, resentment, wounded pride, or embarrassment and must be a direct result of the crime of human trafficking.

"(5) Minor. A person under the age of 19.

"(6) Physical Injury. Impairment of physical condition or substantial pain.

"(7) Sexual Conduct. Any of the following acts:

"a. Sexual Intercourse. This term shall have its ordinary meaning and occurs upon a penetration, however slight; emission is not required.

"b. Sexual Contact. Any known touching for the purpose of sexual arousal, gratification, or abuse of the following:

"1. The sexual or other intimate parts of the victim by the actor.

"2. The sexual or other intimate part of the actor by the victim.

"3. The clothing covering the immediate area of the sexual or other intimate parts of the victim or actor.

"c. Sexually Explicit Performances. An act or show intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or private, live, photographed, recorded, videotaped, or projected over the Internet.

"d. Commercial Sex Acts. Any sex act on account of which anything of value is given, promised to, or received, directly or indirectly, by any person.

"(8) Sexual Servitude. Any sexual conduct as defined in subdivision (3) of Section 14-11-30, [Ala. Code 1975,] for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception from a person; provided,

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however, that if the sexual conduct is with a minor, no coercion or deception is required.

"(9) Trafficking Victim. Any person, including minors, subjected to labor servitude, sexual servitude, or involuntary servitude."

During the hearing, the State presented evidence indicating that, in September 2018, the Madison Police Department received an anonymous tip that a customer had gone into the defendants' Madison location for a massage and that he had been touched inappropriately. As a result, the department started an investigation of TY Green's Massage Therapy that included, among other things, sending multiple men into the business locations undercover to get massages and conducting surveillance of the business locations and of the houses where the employees of the business were housed. The evidence showed that the private massage rooms had signs instructing customers to keep their underwear on. Those rooms also had peepholes in the doors from which managers could look in to make sure that nothing illegal was occurring behind closed doors.

The State also presented evidence indicating that, during the investigation, some of the massage therapists touched clients in places

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they were not supposed to touch according to Board of Massage Therapy guidelines; some massage therapists straddled clients and/or touched the clients with the intimate parts of their bodies and/or touched the intimate parts of the clients' bodies; and at least one massage therapist engaged in sexual acts, including intercourse, with a client. In the factual background set forth in the complaint, however, the State alleged that one of the "victims" had attempted to attribute the sexual contact to "bad customers" rather than to the defendants. The investigation also revealed that the massage therapists lived in houses owned by the Tangs; that the Tangs provided transportation for the therapists each day to get to the business locations where they worked; and that the therapists normally worked 12 hours per day, 7 days per week.

The State further presented evidence indicating that the defendants transported their employees to their banks; however, the testimony indicated that the defendants waited in the lobby area while the employees conducted their own banking transactions. Investigators found personal papers and banking documents, as well as cash, personal cellular

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telephones, and iPad tablet computers, when they searched the various business locations and residences.

Finally, the State presented testimony about facts and circumstances that are common in human-trafficking cases. However, the State did not present any testimony from any of the employees of the defendants that it alleged were victims of human trafficking, including those who were named specifically in the complaint, even though a Mandarin Chinese interpreter was available during the hearing.

In contrast, the defendants presented evidence from two of the defendants' former employees, an expert on Chinese culture, and multiple former clients.

Pengyu testified that he was born in Hebei, China; that he was not smuggled into or coerced to live in the United States; that he had worked for the defendants from March 2017 until their business was shut down; and that he now lives in Houston and provides massages. He also testified that he has a passport and a work permit, that he had them in his possession while he worked for the defendants, and that the defendants' other employees also all kept their own legal documents.

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Pengyu further testified that he was trained in massage at a school in New York and that he was not threatened, forced, or coerced to leave New York and start working for the defendants in Huntsville.

Pengyu testified that, while he worked for the defendants, he lived in a house that they provided; that he paid the defendants \$10 rent per day to live there; that 5 or 6 other people lived there; and that they were allowed to leave the house for shopping, fun, etc. He also testified that he had been free to live somewhere else but that he had chosen to live in the provided housing. Pengyu stated that the defendants had a vehicle to transport employees to work, but he also stated that some of the employees owned their own vehicles. He also stated that he normally had worked from 10:00 a.m. to 10:00 p.m. for the defendants; that the days and hours he had worked had been his choice; that he had never been threatened in any way to work certain hours or certain days; and that he had been free to take off when he wanted to or needed to.

Pengyu testified that the defendants' employees were paid half in cash and half by check. Specifically, he stated that each employee was paid one-half of the cost of each massage he or she gave and was allowed

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to keep the entire tip and that the employees had kept ledgers of the work they did each day and of the tips they had received. He also stated that he could have left the job with the defendants any time he wanted to and that he had seen other workers leave and discontinue their employment with the defendants. Finally, Pengyu testified that he had never been told or encouraged to touch a customer in a sexual way; that employees had been told every day not to have sexual contact with customers; and that the employees would have been fired if they had had such contact with customers.

Cheng Xiu Chai testified that she was born in China; that she had worked for the defendants for about four years; that she had voluntarily left the defendants' employment in September 2018 and had gone to Los Angeles; and that she now lives in Austin, Texas, and provides massages. She also testified that she has a passport and a work permit and that she had kept them in her possession while she worked for the defendants. She further testified that she had met the Tangs through friends and that she had moved from Los Angeles to Huntsville to work for the defendants and that nobody had forced or coerced her to do so.

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Chai testified that she had lived in a house that had been provided by the defendants but that she could have provided her own housing if she had wanted to. She also testified that she had worked at other places providing massages and that other employers had provided housing and transportation and also had had similar hours of operation. Chai further testified that the residents had been responsible for cleaning the house and that they could leave the house when they were not working. She stated that she did not have her own transportation when she worked for the defendants, but she added that some employees did have their own transportation.

Chai testified that she normally had worked for the defendants from 10:00 a.m. to 10:00 p.m. However, she stated that she had been allowed to take off any time she had wanted to and that, in fact, she had taken off a lot to rest. She testified that she had kept one-half of the cost of each massage and all of her tips; that she had kept a ledger every day that she had worked; and that she had been paid partially in cash and partially by check. Chai also testified that she had her own bank account and that the defendants did not have access to it. Finally, Chai testified that she had

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never been instructed to touch customers in a sexual manner; that she had been told daily not to touch customers in a sexual manner; and that she had never touched any customer in a sexual manner.

Jing Shu Zhao, who has lived in the United States for 9 years and works in real estate in the Huntsville area, but who was born in China and had lived there for almost 30 years, was presented as an expert on Chinese culture. She testified that, in China, it is common for employers to provide communal or dormitory-type housing and transportation to work for employees. She also testified that some Chinese and other Asian businesses that are located in the United States provide such housing and transportation for their employees.

Finally, multiple clients testified that they had been to the various business locations over various periods. They all testified that they had not ever seen, heard, or experienced any inappropriate or sexual contact by an employee during a massage.

In this case, the State did not present any evidence to establish that the defendants knew that sexual contact was occurring between some employees and customers, much less evidence that they had induced,

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coerced, or forced the employees to engage in such activity. In fact, both of the former employees who testified stated that they had been specifically instructed each day not to have sexual contact with customers. Likewise, even though many of the employees had worked long hours, the State did not present any evidence to establish that the defendants had induced, coerced, or forced them to work those long hours. In fact, both of the former employees who testified stated that they had been allowed to take time off when they wanted to, and Chai specifically testified that she had taken a lot of time off to rest.

Also, the State did not establish that the defendants had controlled where their employees lived or their transportation. Instead, even though the employees had lived in housing that was provided by the defendants and had been transported to work in the defendants' vehicles, both of the former employees who testified stated that they could have lived somewhere else and that they could have provided their own transportation if they had so chosen. The State also presented evidence to establish that at least one other employee had owned and driven his own vehicle at times.

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Further, the State did not present any evidence to establish that the defendants had controlled the employees' money. Rather, the evidence showed that the employees had been paid one-half of their fee for each service plus 100% of their tips, that the employees had their own bank accounts, and that the employees met individually with bank tellers to determine how they would manage their money. Also, the State did not present any evidence to establish that the defendants had controlled their employees' personal documents. Instead, the evidence from both the State and the defense showed that the employees had possession of their own passports, work permits, immigration documents, and bank cards. Finally, both Pengyu and Chai testified that they had voluntarily chosen to work for the defendants; Pengyu testified that he had seen other employees voluntarily leave their employment with the defendants; and Chai testified that she had voluntarily left her employment with the defendants in September 2018.

Applying the ore tenus rule, the trial court could have reasonably concluded that the State had not established that the defendants were engaging in human trafficking. It also could have reasonably concluded

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that the State had simply presented allegations to that effect and that the defendants had presented conflicting evidence to refute those allegations. This Court has explicitly stated that "[i]njunctive relief will not be granted 'merely to allay apprehension of injury; the injury must be both imminent and irreparable in a court of law.'" Teleprompter of Mobile, Inc. v. Bayou Cable TV, 428 So. 2d 17, 19-20 (Ala. 1983) (quoting Cullman Prop. Co. v. H.H. Hitt Lumber Co., 201 Ala. 150, 153, 77 So. 574, 577 (1917)).

" 'Irreparable injury' is an injury that is not redressable in a court of law through an award of money damages.' [Perley v. Tapscan, Inc.,] 646 So. 2d [585,] 587 [(Ala. 1994)] (citing Triple J Cattle, Inc. v. Chambers, 551 So. 2d 280 (Ala. 1989)). However, 'courts will not use the extraordinary power of injunctive relief merely to allay an apprehension of a possible injury; the injury must be imminent and irreparable in a court at law.' Martin v. City of Linden, 667 So. 2d 732, 736 (Ala. 1995); see also Borey v. National Union Fire Ins. Co. of Pittsburgh, 934 F.2d 30, 34 (2d Cir. 1991) (stating that 'a mere possibility of irreparable harm is insufficient to justify the drastic remedy of a preliminary injunction'). "

Ormco Corp. v. Johns, 869 So. 2d at 1113-14. The evidence supports the trial court's finding that the State did not establish that irreparable harm for which there would be no adequate remedy at law would likely result if the trial court failed to enter a preliminary injunction. Therefore, the

trial court did not exceed its discretion in making that finding and in denying the State's request for a preliminary injunction.<sup>2</sup>

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<sup>2</sup>In their brief to this Court, the defendants include an argument that "Alabama law and due process under the Fifth and Fourteenth Amendments of the Constitution of the United States do not permit [the State] power to seize defendants' property in this case." In McMillan, Ltd. v. Warrior Drilling & Engineering Co., 512 So. 2d 14, 24-25 (Ala. 1986), this Court addressed a similar procedural situation as follows:

"McMillan strongly argues, however, that Howell and Warrior are precluded from raising any issues or assigning any error on appeal by their failure to file an appeal or cross-appeal from the trial court's amended order. We agree. Notwithstanding that perhaps a different rule obtains in the federal system, the law of Alabama is well-settled on this point. In the absence of taking an appeal, an appellee may not cross-assign as error any rulings of the trial court adverse to appellee. ...

"Nevertheless, Howell and Warrior contend that it would have been improper for them to have appealed from a favorable judgment. The inquiry as to the propriety of an appeal does not end with the conclusion that the judgment below was, in its result, favorable to appellee. The question then becomes 'whether any ruling adverse to the [appellee] has been rendered by the trial court from which the [appellee] may maintain an appeal.' Mobile Fuel Shipping, Inc. v. Scott, 360 So. 2d 1028 (Ala. Civ. App. 1978). See also Tyson v. United States Pipe & Foundry Co., 286 Ala. 425, 240 So. 2d 674 (1970). Unquestionably, the rulings of the trial court in its amended order were adverse to Howell and Warrior. That being the case, a cross-appeal as to these rulings not only would have been proper, but also was necessary in order to

Conclusion

For the above-stated reasons, we do not find that the trial court exceeded its discretion in denying the State's request for a preliminary injunction. Accordingly, we affirm the trial court's order.

AFFIRMED.

Shaw and Wise, JJ., concur.

Parker, C.J., and Bolin, Bryan, and Mendheim, JJ., concur in the result.

Sellers, Stewart, and Mitchell, JJ., dissent.

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preserve them for this Court's review."

Applying this reasoning, because the defendants did not file a cross-appeal challenging the seizure of their property, it appears that their argument in this regard is not properly before this Court.

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PARKER, Chief Justice (concurring in the result).

I agree that the Mobile Circuit Court's apparent dispositive ruling -- that the State did not show that it was likely to succeed on the merits -- was supported by the evidence outlined by the main opinion. However, the circuit court also appears to have confused and conflated the elements required for preliminary injunctive relief. I write in an attempt to provide clarity on these elements.

To obtain a preliminary injunction, a plaintiff must demonstrate that (1) without the injunction, the plaintiff will suffer an irreparable injury; (2) the plaintiff has no adequate remedy at law; (3) the plaintiff has a reasonable likelihood of success on the merits (sometimes stated as a "reasonable chance"); and (4) the hardship that the injunction will impose on the defendant will not unreasonably outweigh the benefit to the plaintiff. See Capmark Bank v. RGR, LLC, 81 So. 3d 1258, 1267-68 (Ala. 2011).

We have sometimes treated the irreparable-injury and no-adequate-remedy elements as meaning the same thing: "Irreparable injury is injury that can not be adequately compensated for by damages at law." Benetton

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Servs. Corp. v. Benedot, Inc., 551 So. 2d 295, 299 (Ala. 1989). " 'To say that the injury is irreparable means that the methods of repair (remedies at law) are inadequate.' " Water Works & Sewer Bd. of Birmingham v. Inland Lake Invs., LLC, 31 So. 3d 686, 692 (Ala. 2009) (quoting Fleet Wholesale Supply Co. v. Remington Arms Co., 846 F.2d 1095, 1098 (7th Cir. 1988)). On the other hand, we have sometimes treated them as separate. See, e.g., Ex parte B2K Sys., LLC, 162 So. 3d 896, 904 (Ala. 2014) ("irreparable injury for which there is no adequate remedy at law"); Martin v. First Fed. Sav. & Loan Ass'n of Andalusia, 559 So. 2d 1075, 1078 (Ala. 1990) ("A preliminary injunction will not issue unless without it the plaintiff would suffer immediate and irreparable injury and unless the plaintiff has no adequate remedy at law.").

In different senses, both views are correct: These two elements have the same purpose but different focuses. The essential purpose of a preliminary injunction is to prevent an irremediable harm from occurring before the court can reach a judgment on the merits. See City of Gadsden v. Boman, 143 So. 3d 695, 703 (Ala. 2013) ("[A] preliminary injunction is '[a] temporary injunction issued before or during trial to prevent an

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irreparable injury from occurring before the court has a chance to decide the case.' " (quoting Black's Law Dictionary 855 (9th ed. 2009))).

The irreparable-injury and no-adequate-remedy elements work in tandem to accomplish that purpose. The irreparable-injury element focuses on the timing of the anticipated harm. Assuming that the harm will occur, it must be one that will occur before a final judgment. See Faiveley Transp. Malmo AB v. Wabtec Corp., 559 F.3d 110, 118 (2d Cir. 2009) (" '[T]o satisfy the irreparable harm requirement, [p]laintiffs must demonstrate that absent a preliminary injunction they will suffer an injury ... that cannot be remedied if a court waits until the end of trial to resolve the harm.' " (quoting Grand River Enter. Six Nations, Ltd. v. Pryor, 481 F.3d 60, 66 (2d Cir. 2007))). Although we have often said that the harm must be "imminent," see, e.g., Cullman Prop. Co. v. H. H. Hitt Lumber Co., 201 Ala. 150, 153, 77 So. 574, 577 (1917); B2K, 162 So.3d at 904, that language should not be read as requiring that the harm will occur sometime sooner than simply before judgment. Such a requirement would serve no useful function toward the purpose of a preliminary injunction. Further, this element does not ask whether the harm will

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occur; it assumes that the harm will occur and only asks when it will occur. This feature of the element distinguishes it from the third element, likelihood of success on the merits.

Symbiotically, the second element -- no adequate remedy at law -- focuses on the remedy for the harm. Again assuming that the harm will occur, the element asks whether it will be correctable by a remedy at law. "Remedy at law" means money damages. Ally Windsor Howell, Tilley's Alabama Equity § 3:2(b) (5th ed. 2012). If money will legally cure the harm, then an injunction cannot be had.<sup>3</sup> In this case, there seems to have been confusion about what a "remedy at law" is. The circuit court and the defendants have suggested that the State had an adequate remedy at law because it could prosecute the defendants criminally or seek administrative revocation of their licenses. Those are not remedies at law in the sense used by this injunction element: they are not an award of civil

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<sup>3</sup>There are well-developed doctrines regarding the types of harm that damages will not repair. My purpose here is not to explore those doctrines or to decide whether any applies in this case.

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damages. Thus, the availability of prosecution<sup>4</sup> or license revocation<sup>5</sup> should not have affected the circuit court's analysis of this element.

The remaining two elements inquire whether the plaintiff is likely to ultimately succeed on the merits of the claim and whether it is equitable to impose the hardship of an injunction on the defendant. As with the first two elements, the meaning of each element is clarified by the role it plays in the injunction analysis. The success-on-the-merits

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<sup>4</sup>This Court long ago considered the question whether criminal prosecution is an adequate remedy. See Corte v. State, 259 Ala. 536, 541, 67 So. 2d 782, 786 (1953). We held that it is not: "'Where an injunction is necessary for the protection for public rights, property or welfare, the criminality of the acts complained of does not bar the remedy by injunction ....'" 259 Ala. at 544, 67 So. 2d at 788 (citation omitted).

<sup>5</sup>If a statute requires exhaustion of administrative remedies, then such exhaustion might be a prerequisite to commencing an action to enforce the statute, including one seeking an injunction. See 42 Am. Jur. 2d Injunctions § 32 (2020) ("Exhaustion of administrative remedies as prerequisite to injunctive relief"); but see Ex parte Lake Forest Prop. Owners' Ass'n, 603 So. 2d 1045, 1047 (Ala. 1992) (holding that exhaustion requirement does not apply "where there is the threat of irreparable injury"). But "there is no requirement of exhaustion of administrative remedies where the particular statute allowing the injunctive relief sought has no exhaustion requirement." 42 Am. Jur. 2d Injunctions § 32 (citing Mat-Su Valley Med. Ctr., LLC v. Advanced Pain Ctrs. of Alaska, Inc., 218 P.3d 698 (Alaska 2009)). The statutes here do not require exhaustion. See § 8-19-1 et seq. and § 13A-6-150 et seq., Ala. Code 1975.

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element protects a defendant from being enjoined from conduct that has not been shown to be probably wrongful. Hence, this element asks whether it is likely that the plaintiff will prove at trial that the harm is real and is legally wrongful.

In many of this Court's cases, we have phrased this element as a "likelihood of success on the merits." See, e.g., Facebook, Inc. v. K.G.S., 294 So. 3d 122, 144, 146-47 (Ala. 2019); Classroomdirect.com, LLC v. Draphix, LLC, 992 So. 2d 692, 702 (Ala. 2008); Blaylock v. Cary, 709 So. 2d 1128, 1130 (Ala. 1997). This language correctly suggests that success must be probable. Although the plaintiff does not necessarily have to prove its claim by the standard of persuasion used at trial (that would make the preliminary-injunction hearing analytically redundant with trial), the plaintiff must show more than that success is merely plausible (that standard would be met any time the claim could survive a motion to dismiss under Rule 12(b)(6), Ala. R. App. P.). See generally Securities & Exch. Comm'n v. Banc de Binary Ltd., 964 F. Supp. 2d 1229, 1232-33 (D. Nev. 2013) (discussing probability involved in success-on-the-merits analysis); Dataphase Sys., Inc. v. C L Sys., Inc., 640 F.2d 109, 113-14 (8th

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Cir. 1981) (same). "Reasonable probability," see, e.g., Massey v. Disc Mfg., Inc., 601 So. 2d 449, 454 (Ala. 1992), might be the best we appellate judges can do, flexibly encompassing that range of probabilities that is necessary to ensure that the claim has enough merit to justify an interlocutory injunction. It is true that, as in the main opinion, we have often referred to a "reasonable chance of success on the ultimate merits." See, e.g., Ormco Corp. v. Johns, 869 So. 2d 1109, 1113 (Ala. 2003) (relied on by main opinion); Perley v. Tapscan, Inc., 646 So. 2d 585, 587 (Ala. 1994). But that wording should not be read as lowering the standard to something less than a reasonable probability. Indeed, when we first used the "reasonable chance" language, we relied on a case that used "reasonable probability." See Perley, 646 So. 2d at 587 (citing Martin v. First Fed. Sav. & Loan Ass'n of Andalusia, 559 So. 2d 1075, 1078 (Ala. 1990)). To illustrate the degrees of persuasion, in this case it is definitely plausible that the State will be able to prove that the defendants engaged in human trafficking or deceptive business practices. But the circuit court could have concluded that the State had not shown a reasonable probability that it would prove those claims.

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As I mentioned before, this success-on-the-merits element is distinct from the irreparable-injury and no-adequate-remedy elements. This element does not ask about the timing of or remedy for the harm, and those elements do not ask about the likelihood of the harm. This distinction has not always been clear in our precedent. See, e.g., Double C. Prods., Inc. v. Exposition Enters., Inc., 404 So. 2d 52, 54 (Ala. 1981) ("Injunctions ... will not be granted "... merely to allay apprehension of injury; the injury must be both imminent and irreparable in a court of law ...." ' ' ' (quoting Watts v. Victory, 333 So. 2d 560, 563 (Ala. 1976), quoting in turn Cullman, 201 Ala. at 153, 77 So. at 577)).

The final step is to balance hardships. This element assumes that the plaintiff is likely to succeed on the merits, will suffer an irreparable injury without a preliminary injunction, and will have no adequate remedy at law. The element then asks: "Will the injunction impose a greater hardship on the defendant than it will relieve the plaintiff of?" See Alabama Dep't of Transp. v. Blue Ridge Sand & Gravel, Inc., 718 So. 2d 27 (Ala. 1998); Triple J Cattle, Inc. v. Chambers, 551 So. 2d 280 (Ala. 1989). Balancing the hardships further protects defendants by ensuring

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that they are not subjected to injunctions that might be proper in the abstract but do not make sense in light of practical, real-world consequences to both sides.

Although I agree with the main opinion's core holding, I have written in the hope of helping to clarify this murky area of procedure. The elements for obtaining a preliminary injunction, working together within their distinct roles, ensure that this prejudgment remedy is reserved for cases where it is justified.